

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAWN MARIE BALL
Plaintiff

vs.

LT. BOWER,
C.O. ROGERS,
WARDEN,
LYCOMING COUNTY JAIL,
JANE DOE and JOHN DOE
Defendants

:
:
:
: CIVIL ACTION NO. 1:10-CV-2561
:
: CHIEF JUDGE KANE
:
: MAGISTRATE JUDGE CARLSON
:
: FILED ELECTRONICALLY

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

AND NOW, comes remaining Defendants Lt. Bower and C.O. Rogers, by and through their attorneys, McNerney, Page, Vanderlin & Hall, who move this Court to grant summary judgment in their favor and against Plaintiff pursuant to Federal Rule of Civil Procedure 56, and say in support thereof:

1. Plaintiff commenced this action on December 17, 2010 by Complaint against the Lycoming County Prison and five of its employees, Lt. Bower, C.O. Rogers, Warden, Jane Doe and John Doe.
2. This Court issued a Writ of Summons on January 4, 2011 against all Defendants.
3. Defendants waived service pursuant to Federal Rule of Civil Procedure 4 on December 11, 2011.

4. On March 25, 2011, Defendants Warden, Lycoming County Jail, Jane Doe and John Doe filed a Motion to Dismiss which this Court granted on December 21, 2011, at which time said Defendants were terminated from the case.

5. On March 25, 2011, Defendants Lt. Bower and C.O. Rogers ("Motioning Defendants") filed an Answer to Complaint and Affirmative Defenses.

6. On November 8, 2011 Motioning Defendants served Plaintiff at SCI Cambridge Springs with Discovery Requests in the nature of Interrogatories, Expert Interrogatories, Request for Production of Documents and Request for Admissions.

7. On November 29, 2011, Motioning Defendants re-served their Discovery Requests on Plaintiff at her new address at SCI Muncy together with a cover letter advising of the consequences for failure to respond within the thirty (30) days required by the Federal Rules of Civil Procedure.

8. Having received no response to the outstanding Discovery Requests, Motioning Defendants re-served said Discovery Requests on Plaintiff on April 27, 2012 together with a letter advising of the consequences for failure to timely respond to the outstanding Discovery Requests.

9. Having received no response to the Discovery Requests, Motioning Defendants re-served the Discovery Requests again on May 18, 2012, together with a letter advising of the consequences for failure to respond to the outstanding Discovery Requests.

10. On June 4, 2012, Motioning Defendants received Plaintiff's incomplete responses to the outstanding Discovery Requests.

11. Pursuant to Federal Rules of Civil Procedure 36(b) all matters raised in Motioning Defendants' Request for Admissions are admitted and conclusively established as a result of Plaintiff's failure to deny within the thirty (30) days issued.

12. In the limited responses to the Discovery Requests, Plaintiff has admitted she failed to submit a Request Slip, Grievance, Complaint or Note on the Lycoming County Prison Board complaining of the alleged actions by Lt. Bower and C.O. Rogers on December 10, 2010. Plaintiff further admitted that she did not receive any medical attention at the Lycoming County Prison, SCI Muncy or SCI Cambridge Springs for her alleged injuries from events at the Lycoming County Prison on December 10, 2010.

13. Plaintiff further admits that she does not have any evidence or proof to support her contention that Lt. Bower or C.O. Rogers punched, hit, slapped or otherwise hit her face on December 10, 2010.

14. Plaintiff has failed to produce any documentary evidence to support her claims alleged in her Complaint.

15. Plaintiff has failed to produce any Expert Reports demonstrating any injury or demonstrating Motioning Defendants' actions on December 10, 2010 constituted excessive force.

16. There exists no genuine issue of material fact upon which to find Motioning Defendants violated any of Plaintiff's rights.

17. Motioning Defendants are entitled to judgment as a matter of law in accordance with Federal Rules of Civil Procedure 56.

WHEREFORE, Motioning Defendants hereby request this Court grant Summary Judgment in their favor, to dismiss Plaintiff's Complaint in its entirety against them and to terminate this case as all claims raised by Plaintiff in her Complaint will have been adjudicated upon Summary Judgment in favor of Motioning Defendants.

McNERNEY, PAGE, VANDERLIN & HALL

By: /s/ Robin A. Read
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